

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 21 of 1984

with

CRIMINAL APPEAL No 51 of 1984

With

CRIMINAL APPEAL nO.263 Of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYAsd/-

and

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No.

VALAND ARVIND RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 21 of 1984
MR MANOJ N POPAT for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal AppealNo 51 of 1984
MR JD AJMERA for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

3. Criminal Appeal No.263 of 1984

Mr.D.N.Patel, A.P.P. for Appellant State.

Mr.M.N.Popat, Advocate for respondent No.1

Mr.J.D.Ajmera, Advocate for respondent No.2

Mr.U.A.Vyas, Advocate for respondent No.3

Mr.P.S.Champaneri, Advocate for respondent No.4

Mr.K.B.Anandjiwala, Advocate for respondent No.5.

CORAM : MR.JUSTICE K.J.VAIDYA & MR.JUSTICE D.G.KARIA

Date of decision: 30/01/97

ORAL JUDGEMENT(Per Karia,J.)

All these three appeals arise out of judgment dated November 29,1983 rendered in Sessions Cases Nos.32 and 34 of 1983 in the file of the learned Additional Sessions Judge, Surendranagar. By the impugned common judgment, the learned Judge ordered to acquit all the accused Nos. 1 to 5 for the offence of rape under section 376 of the Indian Penal Code and for the offence of criminal conspiracy under section 120B of Indian Penal Code. The learned Judge also ordered to acquit accused Nos.3,4 and 5 for the offence under section 366 of the Indian Penal Code read with section 120B of the Code. Accused No.1 was also acquitted for the offence under section 5(1)(b),(c) and (d) of Suppression of Immoral Traffic in Women and Girls Act,1956 (now the Immoral Traffic (Prevention) Act,1956, as amended by substituting for the words "the suppression of immoral traffic in women and girls" by Suppression of Immoral Traffic in Women and Girls (Amendment) Act (44 of 1986), as amended with effect from 26.1.1987. Accused No.2 was acquitted for the offence under section 5(1)(b),(c) and (d) of the said Act read with section 109 of the Indian Penal Code. The learned Judge, however, convicted the accused No.1 (Appellant of Criminal Appeal No.21/84) for the offence under section 366 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years. The accused No.2 (appellant of Criminal Appeal No.51/84) was also convicted for the offence punishable under section 366 read with section 114 of the Indian Penal Code for abetment and was sentenced to undergo rigorous imprisonment for two years.

The accused Nos.1 to 4 were tried for the offences punishable under sections 120B, 366,367,373 and 376 of the Indian Penal Code in Sessions Case No.32/83 whereas the accused No.5 was tried for the said offences in Sessions Case No.34/83 and both the said cases were

consolidated. A charge at Exh.7 in respect of the aforesaid offences was framed against all the accused persons to which they pleaded not guilty.

At the time of recording the evidence of the prosecution witnesses, the application at Exh.22 was submitted on August 19,1983 for the purpose of framing charge for the offence of procuring, inducing or taking person for the sake of prostitution punishable under section 5(1)(b),(c) and (d) of Immoral Traffic (Prevention) Act. The said application was granted and accordingly further charge for the offence punishable under section 5(1)(b),(c) and (d) of the said Act was framed against accused Nos.1 and 2 on August 20,1983. Both the accused Nos.1 and 2 pleaded not guilty to the said additional charge.

The prosecution-case, briefly stated, is that P.W.7 Amritlal Maganlal, was residing and serving as Process Men in Dhrangadhra Chemical Works at Dhrangadhra, at the relevant time. He resided with his family members behind the S.T. Bus Stand in Dhrangadhra. He had four sons and two daughters of whom P.W.1 Prosecutrix, Manjula, was aged 19 years and was studying in 9th standard on the day of incident, i.e. on February 15,1983. The maternal uncle of P.W.1 Manjula resided at Sihori in Disa Taluka of Banaskantha District. At the relevant time, P.W.1 Manjula used to go to Surendranagar as she was apprentice in Nita Industries, situated in Surendranagar. She used to move from Dhrangadhra to Surendranagar for the purpose and when she got down either at railway station or S.T. Bus stand, the accused Nos. 1 and 2 used to follow her. She did not know either accused No.1 or accused No.2. It is the prosecution case that the accused No.1 Arvind had demanded her address and P.W.1 Manjula had given her residential address of Dhrangadhra to him. P.W.1 Manjula is said to have visited Nita Industries for two/three days for learning the work. Nita Industries was the factory for manufacturing frames of spectacles. Thereafter accused Nos.1,2 and 3 had visited the P.W.1 at Dhrangadhra at about 5 to 6 p.m. on the next day after P.W.1 had given her address to accused No.1. All these accused persons had promised that accused No.3 Kanubhai was a big boss who would certainly manage for employment of P.W.1. Meanwhile, P.W.7 Amritlal, father of P.W.1, had come at the home and told the accused persons to go away from the place as he did not know them. It is also

the prosecution-case that P.W.7 told P.W.1 that it was not necessary for her to take employment.

However, on next day, when P.W.1 Manjula got down from the bus at about 10.00 a.m., the accused No.1 and accused No.2 were present at the bus stand. Accused No.1 told her to accompany him for the purpose of settling for her employment as a big bos (Mot Saheb) had come at the place of accused No.2. P.W.1 refused to accompany him. However, accused Nos. 1 and 2 had taken P.W.1 at the residence of accused No.2 by compelling the P.W.1 to take a pillion-seat on the scooter of accused No.2. The residence of accused No.2, Prabhubhai was located at Vishwakunj Society in Surendranagar. Accused No.2 had taken P.W.1 Manjula to the said house which was closed at that time. The accused No.2 opened the lock and then took her inside the house. She was made to lie down on a cot and thereafter accused No.2 came with a knife and threatened her. Accused No.2 is alleged to have committed rape on her thereafter. It is the prosecution-case that thereafter accused No.1, accused No.2, accused No.4 and accused No.5 had come there and had committed rape on P.W. prosecutrix Manjula, one after another. The accused No.3 thereafter again came and directed P.W.2 to bring P.W.1 Manjula at the factory for settling her employment. P.W.1 Manjula is said to have refused to accompany him, but P.W.2 took her on her scooter to the factory. It was at about 3.00 p.m. It was disclosed to the prosecutrix, P.W.1 Manjula that there was no vacancy at that time in the factory and she would be called again. P.W.1 had inquired about the name of the factory, but accused No.3 did not reply to it. P.W.1 had then returned to her home at Dhrangadhra at about 6.00 p.m. on that day. She changed her clothes and retired to bed. She did not disclose anything about the rape to her parents.

Thereafter, after about 20 to 24 days, P.W.1 had gone to her school to inquire whether her name was struck off or continued in the attendance roll of the school. At that time, the accused Nos .1 and 2 had intercepted her saying that it was mistake that the illicit things were committed by them on her. Both the accused promised her for her employment again and invited her to come to Surendranagar. P.W.1 refused to go to Surendranagar. Thereupon the accused No.2 threatened her that if she did not come to Surendragar, they would disclose the fact of rape to her parents and would kill her. As she was threatened, P.W.1 told them that she would come to

Surendranagar next day. After reaching home she did not disclose about the fact of inviting her to Surendranagar by accused Nos.1 and 2 or their threatening, to her parents. Next day, P.W.1 told her mother that she wanted to go to Surendranagar for appearing in an interview. She had to go to the place of her maternal uncle at Sihori. She told her mother also that on completion of the interview, she would directly come to Sihori from Surendranagar. In beginning her mother did not permit her to go to Surendranagar, but thenafter when she started for Surendranagar, her mother had given her Rs.100/- for expenses. As she was threatened by accused Nos. 1 and 2, P.W.1 had told lie to her mother and had started for Surendranagar. She had started at about 10 to 11 a.m. for Surendranagar. When she reached Surendranagar Bus Stand, accused No.1 Arvind was standing there. He told her that the big boss of Surendranagar had gone to Viramgam and further told her that she would have to come to Viramgam. Accused No.1 thereafter had compelled her to come to Viramgam by S.T.Bus. When they boarded at Viramgam, accused No.1 told her that he would inquire about the boss and after some time accused No.1 had returned and told the P.W.1 that the boss was not available at Viramgam and therefore they should return home. Thereafter, they had boarded one bus which according to accused No.1 was going to Dhrangadhra. However, accused No.1 and P.W.1 had reached Nadiad by that bus. P.W.1 had told accused No.1 that why she was brought to Nadiad and insisted to go to Dhrangadhra, accused No.1 had then taken her to railway station. They boarded the train for going to Dhrangadhra; instead, they reached Bombay at about 6.00 a.m. on the next day. P.W.1 inquired from accused No.1 as to why she was brought to Bombay to which accused No.1 had replied that they had boarded a wrong train and had come to Bombay. No other train was available to return to Dhrangadhra and therefore accused No.1 had taken her for stroll and thereafter took her to a room of some unknown persons. She was taken at about 6.00 p.m. in that room by the accused No.1. Prior to that accused No.1 had taken her to the places of his relatives.

It is the prosecution-case that the accused No.1 had then kept P.W.1 Prosecutrix Manjula with him for about two to three days. On one evening at about 6.00 p.m., she was taken to a room which was situated on first floor. Accused No.1 went away on some excuse, leaving her in the company of P.W.4, Asgarali, and P.W.5, Mahmud Aslam. P.W.4 had committed rape on P.W.1 and thereafter

P.W.5 had also committed rape on her. P.W.1 however managed to escape from the place and reached Bombay Central Railway Station at about 8.00 p.m. and got the train for Ahmedabad. She reached Ahmedabad Railway Station next day and from there she reached at the place of her maternal uncle at Sihori. She did not tell anything of the Bombay-incident to his maternal uncle, Babulal, nor to her mother.

Next day, after P.W.1 reached Sihori, her father P.W.7 Amritlal had come there and brought her to Surendranagar. During journey from Sihori to Surendranagar, she told her father as to what had happened with her. She was taken to Surendranagar Police Station and a complaint was lodged with regard to aforesaid incident on 16.3.1983. The said complaint is at Exh.60. On the aforesaid facts, offences under sections 120B, 366 and 376 of the Indian Penal Code was registered against the accused.

It may be mentioned at this stage that the accused No.1 had lodged a complaint on 11.3.1983 against P.W.4 and P.W.5 with V.P. Police Station at Bombay for the offence under section 365 of Indian Penal Code alleging that the P.W.4 and P.W.5 had kidnapped or abducted P.W.1 Manjula and had wrongfully confined her. Accused No.1 alleged in his complaint at Exh.88 that on 8.3.1983 he had come to Bombay along with his daughter by name Manjula, aged 20 years, and halted at his relative Jaykantbhai's place at Kandivali, Bombay, for search of bridegroom for his daughter. On 8.3.1983, he had come to Grant Road along with his daughter to purchase Nuri Suit for his daughter at Shalimar Stores. He further alleged in his complaint on 10.3.1983 at about 3.00 p.m. when he reached Bombay Central Railway Station for going back and purchased two tickets for the destination, there were only seven rupees left with him after spending for tickets. The train had arrived on the platform and he found that the tickets were lost. As he had no money except Rs.7/-, he came back to Shalimar Stores along with his daughter Manjulal with a view to return the Nuri Suit that he had purchased and to get money back for journey by returning Nuri Suit. It was about 5.00 p.m. when he reached the shop. He narrated the incident to a person sitting at counter for taking back the Nuri Suit and refunding the amount. He was directed to wait till his elder brother returned to his shop. The accused No.1 waited till 6.00 p.m. Thereafter he was directed to the residence of the elder brother of that person which was

nearby the said shop. The complaint Exh.88 further proceeds to allege that accordingly the accused No.1 with his daughter had come to room No.17 on the first floor of Delhi Darbar Hotel building No.203 where the room of the said person was found locked from outside. That person thereafter having applied the key opened the room and waited there for his elder brother for about 15 minutes. That person asked the accused No.1 to accompany him in search of his elder brother. His daughter Manjula was made to sit there in the room where a co-worker of the shop was present. He went with the accused of that complaint, i.e. p.w.4 and waited for his elder brother till 9.00 p.m. or so when the shop was closed. Thereafter he came to the place where his daughter was made to sit. But to his surprise he saw the room locked from outside and suspected foulplay. He also gave particulars of persons of P.W.4 and P.W.5. On basis of the said complaint, P.W.4 and P.W.5 were arrested and remanded to police-custody and on further inquiry from Surendranagar Police Station, the accused No.1 was named and in the course of the inquiry, P.W.1 Manjula lodged the complaint at Exh.60 against the accused Nos.1 to 5 herein.

The learned Judge recorded the evidence of as many as 17 prosecution-witnesses and on appreciation thereof and having considered the other material on record, concluded in para 58 of his judgment that the following facts were duly proved:-

(1) On or about 5.3.1983, the accused Nos.1 and 2 did not compel the P.W.1, Prosecutrix-Manjula, to leave her house at Dhrangadhra in Surendranagar District by giving promise of employment, but they had induced her to leave the house of her parents.

(2) On or about 5.3.1983 accused No.1 Arvind had taken away P.W.1 Manjula to Bombay with intent that she may be induced to illicit intercourse or that there was possibility to seduce her; however, it was not established that the accused No.1 had taken P.W.1 to Bombay with intent secretly or wrongfully to compell her to prostitution or to exploit her sexually for commercial purposes.

(3) Accused No.1 Arvind had handed over P.W.1

Manjula to P.W.4 Asgarali and P.W. 5 Mahmad Aslam for consideration of Rs.300/- and both of them had illicit intercourse with P.W.1 Manjula. However, accused No.1 had not so handed her over to P.W.4 and P.W.5 for the purpose of prostitution, but he did so as he had no alternative as he was short of money.

(4) On or about 5.3.1983 accused No.1 had kidnapped or abducted P.W.1 Manjula and had taken her to Bombay with intent to force her to illicit intercourse or knowing it that it was possible to seduce her and thereby the accused No.1 had committed offence under section 366 of the Indian Penal Code.

(5) In this connection, accused No.2 Prabhu had also committed offence of abetting the offence punishable under section 366 of the Indian Penal Code and has thereby committed offence punishable under section 366 read with section 114 of the Indian Penal Code.

(6) It is not proved that the accused No.1 had committed offence under section 5(1)(b),(c) and (d) of Immoral Traffic (Prevention) Act.

The accused Nos. 1 and 2 have preferred Criminal Appeals Nos.21 and 51 of 1984 against their respective convictions for the offences under section 366 and section 366 read with section 114 of the Indian Penal Code, respectively. The State has preferred Criminal Appeal No.263/84, so far as the acquittal of the accused persons for the remaining offences is concerned. We have heard the learned Advocates appearing for the respective parties at length.

We have been taken through the relevant evidence and other materials on record and we have considered them carefully. So far as the acquittal-appeal No.263 of 1984 with regard to the offence under section 376 of the Indian Penal Code qua all the accused persons is concerned, we are of the view that the alleged incident of rape on 15.2.1983 by all the accused persons on P.W.1 Manjula is not established beyond all reasonable doubt and the reasons given and the findings recorded by the learned Judge in this behalf cannot be said to be perverse by any stretch of reasoning. We have carefully

scanned the evidence of P.W.1 Manjula, the prosecutrix, at Exh.13, and the learned Addl. Public Prosecutor has not been able to impress that the view taken by the learned Judge was unreasonable or perverse in any way.

As regards the conviction of the accused No.2 for the offence under section 366 read with section 114 of the Indian Penal Code, the question to be considered is whether in the facts and circumstances of the case, the accused No.2 can be held to be guilty for the offence of abetment of kidnapping or abducting or inducing P.W.1 the prosecutrix to compel her to illicit intercourse. It is true that it is in the evidence of P.W.1 Manjula at Exh.13 that after the alleged incident of rape at Vishwakunj Society in Surendranagar by all the accused persons, some 20 to 24 days had passed and when she was returning from school, accused No.2 accompanied by accused No.1 had intercepted her and had induced her to come to Surendranagar by giving her a promise of employment. She refused to come to Surendranagar at initial stage and thereupon she was threatened that the story of rape on 15.2.1983 would be disclosed to her parents. However, according to the evidence of P.W.1, when she reached Surendranagar, accused No.2 was not present at the bus stand. Accused No.1 alone was present there. Therefore, having regard to the totality of the evidence of P.W.1, it cannot be said that the accused No.2 had aided or abetted the kidnapping of P.W.1. Apart he being absent at the time when she boarded the bus at Surendranagar Bus Stand, nothing is attributed to accused No.2 in regard to abetment or aiding of the offence of kidnapping. P.W.1 Manjula, the prosecutrix, has been cross-examined at length in question and answer form. In this connection, question No.218 in cross-examination is pertinent. It is as under:-

"Question: You had not started for Surendranagar
at the instance of accused Arvund and
accused Prabhu; Had you?

Answer: No. I had not started for
Surendranagar at their instance."

On examination of the evidence of P.W.1, it appears that the learned Judge has lost sight of this admission of P.W.1. If P.W.1 had not left for

Surendranagar at the instance of Prabhu, the accused No.2, it is not understood as to how he can be held to be responsible for abetment or aiding the offence of kidnapping under section 366 which is said to have been committed by accused No.1, Arvind. Sufficient time has elapsed since accused No.2 had approached P.W.1 at Dhrangadhra or threatened her and that it cannot be concluded from the evidence on record that the accused No.2 was the person at whose instance P.W.1 Manjula left for Surendranagar and from there to Viramgam and then to Bombay. It appears that the two incidents, one of 18.3.1983 said to have occurred at Vishwakunj Society in Surendranagar and the other of leaving for Surendranagar, Viramgam, Nadiad and Bombay, are confused. However, there is no evidence which would establish the guilt of accused No.2 in regard to abetment of the offence. In this view of the matter, the conviction of accused No.2 for the offence punishable under section 366 read with section 114 of the Indian Penal Code cannot be sustained. Criminal Appeal No.51/84 by accused No.2 deserves to be allowed, setting aside his conviction and sentence for the offence punishable under section 366 read with sec.114 of the Indian Penal Code.

So far as accused No.1 is concerned, he has been held guilty for the offence punishable under section 366 of the Indian Penal Code and accordingly sentenced as aforesaid. Mr.Manoj Popat, learned Advocate appearing for the accused No.1 has not been able to successfully assail the reasonings and findings recorded by the learned Judge in this behalf holding the accused No.1 guilty for the said offence under section 366 of the Indian Penal Code. In our opinion, the evidence in this behalf is clinching and thumping, attributing intention to the accused No.1 of taking P.W.1 Manjula to Bombay for the purpose of illicit intercourse for the following reasons:-

It is clear from the evidence on record, particularly of P.W.1 Manjula that by false promise of service or employment, accused No.1 had taken P.W.1 first to Viramgam, then to Nadiad and finally to Bombay. The evidence of P.W.1 is in consonance with her complaint at Exh.60. The accused No.1 has denied the circumstances that appeared against him in the evidence and has further submitted his explanation in writing at Exh.78. Accused No.1 and the appellant of Criminal Appeal No.21/84 has, inter alia, contended therein that P.W.1 Manjula had met him near Employment Exchange in Surendranagar and thus

the acquaintance had resulted into friendship. According to accused No.1, as the parents of P.W.1 wanted to marry her to an old person in a village and P.W.1 being against it, she wanted to marry accused No.1. The parents of P.W.1 being poor and unable to provide dowry wanted P.W. 1 to get married with an old person in a village and as such she wanted to stay with accused No.1 by friendship agreement as accused No.1 was married and had children. Meanwhile, he had to go to Bombay as his father was suffering from Cancer. When he was at Bombay, all of a sudden, P.W.1 Manjula had met him at Bombay Central Station and told him that she had come from Dhrangadhra and that she had no other relatives in Bombay and she wanted to go with accused No.1. Accused No.1 had, therefore, taken her to his relatives at Kandiwali. P.W.1 had thus stayed for one night and two days with accused No.1 at Kandiwali. He had also taken her to P.W.2 Kokilaben Exh.15 where she had told P.W.2 Kokilaben that P.W.1 wanted to have friendship agreement with accused No.1. P.W.2 Kokila had admonished her saying that this was not proper as accused No.1 was aged and was having children. Thereafter accused No.1 had taken P.W.1 to purchase Nuri Suit in Shalimar Stores at Grant Road in Bombay. Next day she had gone to change the Nuri Suit that was purchased earlier and had talked with one Mahmud Aslam P.W.5 about which he knew nothing. The luggage of accused No.1 and P.W.1 were kept in Shalimar Stores and he had gone out for some time. P.W.1 had disappeared from the stores as a result of which he had lodged complaint with V.P. Road Police Station in Bombay. Next day, he had returned from Bombay to Surendranagar. Surendranagar Police had made investigation as a result of the complaint lodged by accused No.1 with V.P. Road Police Station at Bombay and the false case was filed against accused No.1. He denied having falsely promised P.W.1 for employment or having taken her to Bombay for causing her to be subjected to illicit intercourse.

Now, if the complaint lodged by accused No.1 at the V.P. Road Police Station on 11.3.1983 at Exh.88 is referred to along with the evidence of P.W.17 Vinayak Chandrashekhar Deshmukh, who was the P.S.I. of V.P. Road Police Station at the relevant time, it would be clear that the complaint by accused No.1 is false and concocted. Accused No.1 has described P.W.1 Manjula as his daughter in the complaint. He has also created the story of having lost tickets and had again having gone to Shalimar Stores for taking refund in exchange of Nuri Suit that was earlier purchased. If the said complaint Exh.88 is read between the lines, it is evident that

accused No.1 has created the story to cover up the entire incident of bringing P.W.1 to Bombay for subjecting her to illicit intercourse by him and by others. It is pertinent to note at this stage that the material particulars of his complaint at Exh.88 are not mentioned in his written statement at Exh.78.

This takes us to the evidence of P.W.4 Asgarali Jivabhai Exh.20 and P.W.5 Mahmud Aslam Exh.23. Both these prosecution witnesses were Salesmen at Shalimar Stores at Grant Road in Bombay at the relevant time. It is clear from the evidence of both these witnesses that the accused No.1 had gone with P.W.1 Manjula to the said Shalimar Stores for consecutively three days on 8th,9th and 10th of March 1983. On 10.3.1983 when accused No.1 went to said Shalimar Stores with P.W.1 Manjula, he projected her as his daughter and told P.W.5 that if they could please the girl, she would stay in their room for one night. So, P.W.4 had given the key of his room to P.W.5 and they had gone to the said room situated at Delhi Darbar Hotel, situated at Forkland Road, Bombay, which is known as red light area. At that time, P.W.1 was standing outside the lobby and accused No.1 had settled with P.W.1 that P.W.4 would stay for the night in the room for Rs.300/-. Accordingly, P.W.4 had paid Rs.300/to accused No.1. Accused No.1 thereafter had gone for movie so as to be away from the room. At the time of going, he had told P.W.4 that he would not worry about the girl and if she hesitates for intercourse, he should not be perplexed. At the time of leaving the room, accused No.1 had told something to P.W.1 which could not be heard by P.W.4. Thereafter, P.W.4 and P.W.5 had committed sexual intercourse with P.W.1, though P.W.1 raised protests. When P.W.4 and P.W.5 had gone downstairs from the room, P.W.1 Manjula managed to escape and had ultimately reached Sihori at the place of her maternal uncle. That followed lodging of the complaint at Exh.88 by accused No.1 against P.W.4 and P.W.5. Thus, considering the evidence of P.W.4 and P.W.5, it clearly establishes that the accused No.1 had induced P.W.1 Manjula or had taken or caused her to sexual exploitation for commercial purpose or such consideration. The learned Judge, as noticed hereinabove, concluded in this connection that it is proved that the accused No.1 handed over P.W.1 Manjula to P.W.4 and P.W.5 for the purpose of illicit intercourse. However, in his opinion, it was on account of shortage of some fund and it cannot be for the purpose of taking her for the sake of prostitution. He, therefore, acquitted the accused No.1 for the offence punishable under section 5 of the Immoral Traffic

(Prevention) Act,1956.

In view of the evidence of P.W.4 and P.W.5 and the material contradictions of his written explanation at Exh.78 read with the complaint lodged by the accusee No.1 with V.P. Road Police Station, Bombay, the learned Judge appears to have omitted to consider the provisions of section 5 of the Immoral Traffic (Prevention) Act. Section 5 of the said Act is in pari materia with the provisions of section 5 of Suppression of Immoral Traffic in Women and Girls Act, which reads as under:-

"5. Procuring, incuding or taking (person) for the sake of prostitution.-(1) Any person who-

- (a) procures or attempts to procure a person whether with or without his consent, for the purpose of prostitution; or
- (b) induces a person to go from any place,with the intent that he may for the purpose of prostitution become the inmate of, or frequent a brothel;
- (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or
- (d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years;

Provided that if the person in respect of whom an offence committed under this sub-section-

x x x x x".

Therefore, having regard to the aforesaid provisions of section 5 relating to procuring, inducing or taking a person for the sake of prostitution, it becomes clear on basis of the evidence on record that the accused No.1 had settled with P.W.4 and P.W.5 for Rs.300/- so that P.W.1 be caused or induced for the purpose of illicit intercourse. The submission of Mr.Popat in this regard is that the accused No.1 was the victim of trap by P.W.,4 and P.W.5. However, he has not been able to explain what sort of trap was laid by P.W.4 and P.W.5 against accused No.1, nor he could point out any question with regard to trap in the cross-examination of P.W.4 and P.W.5. The submission of Mr.Popat that if accused No.1 had finalised the transaction of Rs.300/- for the purpose of illicit intercourse of P.W.1 by P.W.4 and P.W.5, he would not have lodged the complaint at V.P.Road Police Station, Bombay, has also no substance, inasmuch as on reading the evidence of P.W.4 and P.W.5, there is clear admission by both these witnesses that they had sexually abused P.W.1 as a result of transaction between them and the accused No.1 In this view of the evidence on record and having regard to the aforesaid provisions of section 5 of the Immoral Traffic (Prevention) Act, the finding recorded by the learned Judge that on account of shortage of fund, the accused No.1 would have caused or induced P.W.1 to illicit intercourse by P.W.4 and P.W.5 cannot be believed, inasmuch as there is clear evidence to suggest that the transaction was for consideration or for commercial purpose as the accused No.1 had accepted Rs.300/- for allowing P.W.1 to be in the room of P.W.4 and P.W.5 on the night of 10.3.1983. In our view, the evidence of P.W.4 and P.W.5 appears to be consistent and natural and is also corroborated by evidence of P.W.1, Manjula, on the point of illicit intercourse with her by P.W.4 and P.W.5.

It was contended on behalf of the accused No.1 that the evidence of P.W.4 and P.W.5 is in the nature of accomplice and as such it cannot be relied on nor acted upon. We are afraid, there is no substance in this submission. Illustration (b) of section 114 of the Indian Evidence Act, 1872 provides that the Court may presume that an accomplice is not worthy of credit, unless he is corroborated in material particulars. However, section 133 of the Evidence Act contemplates that an accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Keeping this legal position in mind, we may examine whether P.W.4 and P.W.5 can be characterised

to be the accomplices. An accomplice means a guilty associate or partner in offence or who in one way or other is connected with crime in question or who makes admission of facts showing that he has a conscious hand in commission of the crime. Thus, primary meaning of accomplice is any person connected with crime and someone who aids or abets the commission of crime. In our view, having regard to the peculiar facts of the case and evidence of P.W.1, the Prosecutrix-Manjula, and that of P.W.4 and 5, no knowledge or intention can be attributed to P.W.4 and P.W.5 with regard to illegal and immoral activities and conduct of accused No.1. From the fact that P.W.4 and P.W.5 are the accused persons in the complaint that came to be lodged with V.P.Road Police Station, Bombay for the offence punishable under Section 365 of the Indian Penal Code, it cannot be concluded that P.W.4 and P.W.5 are the active persons in commission of the crime for the offence under section 5 of the Immoral Traffic (Prevention) Act. The complaint at Exh.60 by the prosecutrix-Manjula has no nexus with the complaint that was lodged with V.P. Road Police Station, Bombay. Therefore, by no stretch of reasoning, P.W.4 and P.W.5 can be characterised as accomplices. Yet, evidence of P.W.4 and P.W.5 is in corroboration with each other. P.W.1 Manjula also deposed about illicit sexual intercourse with her by P.W.4 and P.W.5 at the instance of accused No.1. In view of this evidence on record and attending circumstances, there is no substance in the submission that P.W.4 and P.W.5 were accomplices. Therefore, in view of this evidence on record, the conviction and sentence of the accused No.1 recorded by the learned Judge for the offence punishable under section 366 of the Indian Penal Code requires to be confirmed.

As observed hereinabove, the learned Judge omitted to consider section 5 of the Immoral Traffic (Prevention) Act, 1956, though he clearly held that the fact was proved as regards accused No.1 having handed over P.W.1 Manjula to P.W.4 and P.W.5 for consideration of Rs.300/- for the purpose of illicit intercourse on night of 10.3.1983. We are unable to agree with the findings that it was so on account of shortage of funds with accused No.1. Considering the entire evidence on record regarding the conduct of accused No.1 and his false complaint with V.P.Road Police Station and inconsistent stand taken by him in his written statement at Exh.78, he is guilty for the offence punishable under section 5 of the Immoral Traffic (Prevention) Act. Assuming that the accused No.1 was short of funds, he

could not have caused P.W.1 to illicit intercourse for consideration or subjected her to such immoral and illegal intercourse. It is clear from the evidence on record that he has taken advantage of the helpless condition of P.W.1 by subjecting her to illicit intercourse by P.W.4 and P.W.5. In this view of the matter, the accused No.1 is also guilty for the offence punishable under section 5(1)(b)(c) and (d) of the Immoral Traffic (Prevention) Act, 1956. Therefore, the State appeal deserves to be allowed to that extent, quashing the acquittal of accused No.1 in regard to offence punishable under section 5(1)(b),(c) and (d) of the Immoral Traffic (Prevention) Act, 1956.

In the result, Criminal Appeal No.21/84 is dismissed, and the conviction and sentence of accused No.1, Valand Arvind Ranchhodbhai, for the offence punishable under Section 366 of the Indian Penal Code is confirmed.

Criminal Appeal No.51/84 of accused No.2, Valand Prabhu Harjivandas, is allowed and his conviction and sentence for the offence punishable under section 366 read with section 114 of the Indian Penal Code is quashed and set aside. Accused No.2 is acquitted of the said offence. His bail-bonds shall stand cancelled.

Criminal Appeal No.263/84 by the State is partly allowed. Accused No.1, Valand Arvind Ranchhodbhai, is convicted for the offence punishable under section 5(1)(b),(c) and (d) of the Immoral Traffic (Prevention) Act, 1956 and he is sentenced to undergo minimum sentence of rigorous imprisonment for three years and to pay a fine of Rs.1,000/- (rupees one thousand only), in default to undergo further rigorous imprisonment for six months. The substantive sentences awarded to accused No.1 shall run concurrently. The bail-bonds of accused No.1 stand cancelled.

The appeal against the remaining accused Nos.3,4 and 5 for the offences punishable under sections 120B, 366 and 376 of the Indian Penal Code is ordered to be dismissed.

At this stage, Mr.Manoj Popat requests for some time for the accused No.1 to surrender. In the facts of

the case, the accused No.1 is granted time of three weeks to surrender.
